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SESSIONAL WORKING GROUP ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SUMMARY RECORD OF THE 7th MEETING

Held at Headquarters, New York,
on Friday, 17 April 1981, at 10.30 a.m.

Chairman: Mr. JOHNSON (Ecuador)

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The meeting was called to order at 10.35 p.m.

CONSIDERATION OF THE REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1988 (LX) BY STATES PARTIES TO THE COVENANT CONCERNING RIGHTS COVERED BY ARTICLES 10 TO 12 (continued)

1. The CHAIRMAN informed members that the Bureau had met after the adjournment of the 6th meeting of the Working Group in order to clarify aspects of the understanding which had been reached during informal consultations in 1980. The Bureau had decided to present to the Working Group a clarifying paragraph which it wished to have included in the report of the current session of the Working Group, so that in future years there would be no difficulties in connexion with some details of the Working Group's procedure. The Bureau had decided to submit the following text to the Working Group for approval:

> "On the basis of the understanding reached by the Working Group in informal consultations in 1980, it was agreed that States Parties presenting reports to the Group would be free to respond to comments made by specialized agencies if they so wished."

As that text was merely a clarification of a procedure that had been utilized in the work of the Working Group in 1980, it was suggested that it should be adopted by consensus without debate.

2. Mr. CHERNICHENKO (Union of Soviet Socialist Republics) said that the language of the text read out by the Chairman should be clarified and made more specific. He hoped that members would not object to the following wording:

> "States in their replies may take into account the general comments made by specialized agencies within the confines of their competence."

That text was in keeping with the understanding reached in 1980 and entailed no departure from the principle agreed upon.

3. Mr. SVERRE (Norway) said that the text submitted by the Bureau was quite clear and corresponded to the understanding that had been reached on the matter. There was no need to change or supplement it with any wording which, in the view of his delegation, was unnecessarily restrictive in nature.

4. Ms. BOSHKOVA (Bulgaria) said that the text proposed by the representative of the Union of Soviet Socialist Republics was more in line with the position of her delegation. The gentlemen's agreement reached in 1980 had not set a precedent. If there was a change in the status of an international organization, that changed the status of its work as a whole.

5. Mr. DIA (Senegal) said that the text proposed by the Bureau correctly reflected the understanding that had been reached in 1980.

6. Mr. PAL (India), Rapporteur, said that the understanding reached in 1980 had included two points, one referring to the manner in which the specialized agencies could comment - that is to say, within their sphere of competence - and the other referring to the fact that States would be free to respond to those comments. As he understood the Soviet proposal, it was designed to combine the two aspects of that understanding. He suggested that he, as Rapporteur, and the Secretary of the Committee might be able to work together to prepare a text that would be acceptable to all.

7. The CHAIRMAN said that he had been thinking along the same lines as the Rapporteur and suggested the following text:

> "On the basis of the understanding reached by the Working Group in informal consultations in 1980, it was agreed that States Parties presenting reports to the Group would be free to respond to or take into account the general comments made by specialized agencies if they so wished."

If there was no objection, he would take it that the Working Group agreed to that text.

8. It was so decided.

9. The CHAIRMAN said that, since it appeared that sometimes the work of the Working Group in connexion with the consideration of reports submitted by States parties to the Covenant was finished an hour or so before the official concluding time for meetings, the Bureau had decided to suggest that beginning on Monday, 20 April 1981, members should come prepared to start work on the review of the composition, organization and administrative arrangements of the Working Group. That would allow the Working Group enough time towards the end of the present session to conclude its work successfully and without too much pressure. If there was no objection, he would take it that the Working Group accepted that suggestion.

10. It was so decided.

Report of Chile (E/1980/6/Add.4)

11. At the invitation of the Chairman, Mr. Thayer (Chile) took a place at the Working Group table.

12. Ms. BOSHKOVA (Bulgaria) noted that the report of Chile was dated 16 September 1979. Since then, the General Assembly had adopted resolution 35/188 and the Commission on Human Rights had adopted resolution 9 (XXXVII), both of which referred to the fact that the situation in Chile had not improved and had in fact worsened. The Working Group would be violating those resolutions if it considered the report of Chile at the present time.

13. Mr. CHERNICHENKO (Union of Soviet Socialist Republics) said that his delegation strongly objected to consideration of the report of Chile. Both of the resolutions referred to by the representative of Bulgaria pointed out the fact that

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in Chile there were still flagrant and massive violations of human rights and that in some cases there had even been a deterioration of the human-rights situation in Chile. It was therefore questionable whether the Working Group could discuss a report submitted by Chile, particularly one dated 25 September 1979. It had been made quite clear at the discussions at the latest session of the Commission on Human Rights that the human-rights situation in Chile was unchanged and no additional explanations from the representative of Chile could conceal that fact. Discussion of the report of Chile in the Working Group would only divert attention from the flagrant and massive violations of human rights in Chile; that was, of course, what the Chilean authorities were counting on. Furthermore, it would be wrong to consider individual points relating to human rights independently of the over-all human-rights situation in Chile. As was pointed out in General Assembly resolution 32/130, all human rights and fundamental freedoms were interrelated and indivisible. If the highest authority of the United Nations had recognized the flagrant and massive violations of human rights in Chile, any discussion in the Working Group on the implementation of three articles of the Covenant on Economic, Social and Cultural Rights, would create a real danger of distorting the over-all picture of human rights in Chile and would undermine the decisions of certain United Nations bodies, especially those referred to by the representative of Bulgaria.

14. Mr. KORDS (German Democratic Republic) said that the Commission on Human Rights was dealing with the situation in Chile under a separate agenda item and that the mandate of the Special Rapporteur on the matter had been extended for one year. It would therefore be inappropriate to discuss the report of Chile at the present time.

15. The CHAIRMAN said that the Working Group had already approved its programme of work, as set forth in document E/1981/WG.1/L.1/Rev.1, and that the report of Chile was scheduled for consideration at the morning meeting on 17 April. He would therefore ask the representative of Chile to clarify the reports his Government had submitted, in order that the Working Group might be made aware of the exact details pertaining thereto. Delegations could then ask questions regarding the statement by the representative of Chile.

16. Mr. THAYER (Chile) pointed out that no point of order had been raised and that his Government was submitting its report on articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights in keeping with the agreed schedule. He would not refer to matters that were irrelevant to the specific subject of the meeting, as that would unnecessarily distract the attention of members of the Working Group. Obviously, respect for human rights should be universal, but specific situations in various countries and problems encountered in specific fields of human rights should be studied. That required the specialized efforts of several agencies within the United Nations system.

17. He wished at the present time to provide a supplementary report intended to update the one contained in document E/1980/6/Add.14. Chile was undergoing an acceleratd process of institutional reorganization, and thus, there had been

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several developments during the period between 29 September 1979 and April 1981 which should be explained in order to give a correct picture of the current situation in his country. There had been no change that might detract from the guarantees or rights covered by articles 10 to 12 of the Covenant. What had changed had been the drafting of certain precepts in the Constitutional Acts which had been in force in Chile when the report (E/1980/6/Add.4) had been prepared. Those provisions had been amended in a purely formal manner by the Constitution that was now in force, which had been approved by a plebiscite on 11 September 1980. To facilitate reference to the report contained in document E/1980/6/Add.4, he would discuss the changes affecting implementation of articles 10 to 12 in the order in which they were discussed in the report.

18. With regard to article 10, paragraph 1, of the Covenant, the reference in the 1979 report to Constitutional Act No. 2 and Constitutional Act No. 3 was superseded by articles 1 and 19 of the new Constitution. Article 1 of the new Constitution stated that men were born free and equal in dignity and rights, that the family was the fundamental nucleus of society, that the State recognized and protected intermediate groups through which society was organized and structured, that the State was at the service of its people to promote the common good, and that the State had the duty to safeguard the national security, and to promote the harmonious integration of all sectors of the nation and ensure equality of opportunity to participate in the life of the nation. Article 19 of the new Constitution guaranteed, inter alia, the right to life and physical and mental integrity, protection of unborn life, respect for and protection of the private and public lives of persons, as well as the honour of persons and families, and the inviolability of the home and all forms of private communications. Since the new constitutional precepts reaffirmed the rights that had been enshrined in the Constitutional Acts referred to in the 1979 report, there was no change in the references to legislation that was designed merely to implement the constitutional precepts.

19. With reference to article 10, pargraph 2, the only change was that a correction should be made to paragraph 5 of the comments on page 4, which stated that as long as the contract remained in force, the mother could not be dismissed for the entire period of pregnancy and up to one year after childbirth. Actually, the period of protection of the mother was longer, inasmuch as the period during which she could not be dismissed was not one year after childbirth but rather one year after the end of the 12 weeks' maternity leave.

20. With regard to article 11, paragraph 1, the new constitutional precept which covered the subject was the aforementioned article 19, paragraph 16 (2) of which stated that everyone had the right freely to enter into a contract, to choose his work and to receive fair remuneration. The precept did not directly link the worker's remuneration with the welfare of his family, inasmuch as current thinking with regard to social security was predicated on the idea that the protection of a family should be based not solely on the salary of the wage-earner but rather on the entire system of services provided by social legislation. Members of the Working Group were no doubt aware that in many countries, when the family situation

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had been linked to the salary of the head of the family, workers who were married and had dependants were at a disadvantage in finding a job in comparison with single persons. Chile therefore made no distinction between minimum salary requirements and family responsibilities. The problem of family responsibilities was dealt with through other aspects of social legislation, such as the family allowances for spouses and children, as well as the provision of institutional services for abandoned children and orphans. Likewise, the policy on housing established certain priorities with regard to the granting of subsidies. In addition, there were many other social programmes, such as those providing day care, the administration of justice in respect of juveniles, health-care programmes, programmes carried out by the Ministry of Labour and Social Welfare, and the services provided by the Ministry of the Interior in cases of natural disasters.

21. The rights laid down in article 12, paragraph 1, of the Covenant were guaranteed in article 19, paragraphs 8, 9 and 18 of the new Constitution. The State ensured free and equal access to medical and health facilities, and citizens could opt to avail themselves of public or private facilities. Health care was made available to the general public through the social security system, which had just been extensively overhauled; the reform had led to the creation of a national health fund, which operated through 23 national health services in various parts of the country.

22. Beyond the changes he had just mentioned, the introduction of the new Constitution had not markedly changed Chilean legislation affecting the Covenant. The Working Group might, however, be interested to learn that the proportion of the national budget devoted to social spending had grown from 40.5 per cent in 1970 to 50.1 per cent in 1980 - a creditable performance, he believed, for a developing country with a per capita annual income of some $1,600. The number of children attending kindergartens had risen from 16,000 in 1974 to 48,000 in 1980. Infant mortality had decreased steadily and had now reached a level of about 35 per thousand live births. Pre-school mortality (deaths in children aged between one and four years) had also declined, from 3.8 per cent in 1970 to 1.51 per cent in 1979, a figure which indicated progress even though the Government had not yet reached the target of less than 1 per cent child mortality. Deaths from contagious diseases were likewise diminishing in number.

23. The number of professionally attended births had risen from around 80 per cent in 1969 to 90.4 per cent in 1979, and indications were that the latest figures were slightly better than that.

24. There had been a marked spurt in housing construction in recent years, especially since 1978. The Government's policy was that individuals ought to provide for their own accommodations, but those sectors of the population which could not afford their own housing were heavily subsidized, even though the available resources could not keep up with the demand. It was the Government's hope that most people would eventually be in a position to pay for their own housing with a combination of their earnings and long-term loans.

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25. The current national minimum wage was set at the equivalent of about $140 per month, a figure very close to the average national income per capita. It was the Government's hope that as national production grew, social development and the minimum wage would at least keep pace with the growth in the economy.

26. Mr. SAMSON (International Labour Organisation) said that he wished to draw the Group's attention to some of the comments made by the ILO Committee of Experts on the Application of Conventions and Recommendations concerning the Chilean report, as had been the practice of ILO representatives at the preceding session and on earlier occasions.

27. Chile had ratified the maternity protection convention of 1919 (No. 3). That Convention called for free attendance by a doctor or certified midwife in cases of maternity; however, as the Committee had noted, medical care was free for manual workers but not non-manual workers, civil servants and others. The Committee had therefore indicated a need to bring the legislation into line with the Convention on that point. Efforts to create a uniform health-protection system were currently under way, and the question would doubtless be considered in that context.

28. The Committee had also expressed a desire for additional information on measures restricting the assignment of women to work which might be harmful to their health during the period immediately following maternity leave. The current measures applied only to the period of pregnancy, not to the post-natal period, while article 10, paragraph 2, of the Covenant called for special measures of protection to be accorded to mothers for a reasonable period both before and after childbirth.

29. In connexion with one of the ILO Conventions on the protection of children which Chile had ratified, the Committee had noted the need for measures to restrict the carrying of loads by young workers and had commented on the desirability of further information on measures restricting work by children and young persons outside an employment relationship, limiting night work by young persons in non-industrial applications and ensuring stricter observance of the national legislation on child labour.

30. Mr. KORDS (German Democratic Republic) said that his delegation was opposed to the consideration of a report which was in flat contradiction with other United Nations documents; he called for informal consultations on the subject.

31. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) suggested that the Group should retain the formula it had worked out by consensus in 1980; if it did so, there would be no need for informal consultations.

32. Mr. BORCHARD (Federal Republic of Germany) asked whether the purpose was to reflect the compromise in the Working Group's report, as had been done in 1980.

33. At the suggestion of the Chairman, the meeting was suspended at 11.50 a.m. and resumed at 12.20 p.m.

34. The CHAIRMAN read out the following statement as a summary of the Group's consideration of the Chilean report:

> "The members of the Working Group considered the report of Chile, contained in document E/1980/6/Add.4. During consideration of the Chilean report some members of the Working Group referred to expressions of concern on the question of human rights in Chile in other United Nations bodies. Members of the Working Group believe that additional information should be provided by the Government of Chile in the next report to be submitted by it under the Covenant concerning rights covered by articles 10 to 12, in accordance with the general guidelines prepared by the Secretary-General."

He declared that the Group had now concluded its consideration of the Chilean report.

Report of Austria (E/1980/6/Add.19)

35. Mr. ALMOSLECHNER (Austria), introducing his country's report (E/1980/6/Add.19), said that nearly 97 per cent of the people living in Austria had health insurance coverage. Austria had a very high standard of living, with a per capita GNP of 121,860 schillings per annum and a per capita GNP growth rate above the European average. Austrians could draw on an extensive system of social security coverage.

36. Equality before the law, for citizens and foreigners alike, was guaranteed under article 7 of the Constitution and article 1 of the Federal Constitutional Act of 1973, the few exceptions being in compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. Austrian legislation on the protection of the family was derived largely from the European Convention on Human Rights and embraced special grants to couples embarking on their first marriage, tax reductions and other benefits. It gave effect to the requirements of ILO Convention No. 103 on Maternity Protection; the country had a very advanced maternity and child health care system. Working women were entitled to - and, indeed required to take - maternity leave before and after childbirth, and they enjoyed job protection during pregnancy and for up to four months after giving birth.

37. Protective measures for children and young persons were dealt with partly under civil and partly under private law, and included provisions ranging from child-care centres to supervised education designed to prevent child neglect and abuse; restrictions were placed on the occupations in which young persons could be employed.

38. With regard to article 11 of the Covenant (E/1980/6/Add.19, p. 17), the Austrian Government had adopted a large number of measures in the field of employment policy, social policy and income policy, with a view to safeguarding a standard of living that was adequate to the needs of the population. In connexion with the regulation of the food market to that end, he drew attention to the Agriculture Act of 1976 (p. 18). Efforts were also being made to promote

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agriculture and forestry with a view to improving the living conditions of the rural population and guaranteeing the production of high-quality food, while respecting environmental needs and the need to preserve farm land.

39. He also drew attention to the Market Organization Act of 1967, the Animal Industry Act of 1976 and the Food Quotas Act of 1952 (p. 18), which were all directed towards price support and stabilization in the context of food distribution.

40. The Food Act of 1975 and the Quality Grading Act (p. 18) were designed to improve the quality and safety of food.

41. Referring to the right to housing, (p. 21), he drew attention to the Housing Promotion Act of 1968 and the Housing Improvement Act, as well as to the laws dealing with the promotion and organization of the right to housing. In housing construction, special care was being taken to use energy-conserving technologies (p. 23). The protection of tenants was guaranteed by the Rent Act, the Rent Control Act and the 1974 amendment to the Rent Act (pp. 23-24).

42. With regard to article 12 of the Covenant (p. 25), he said that Austria had adopted a comprehensive system of laws, administrative regulations, collective agreements and other types of arrangements in order to protect the physical and mental health of its population.

43. With a view to reducing infant mortality, the Austrian Länder (provinces) were required, under the Youth Welfare Act, to adopt measures to ensure health services for pregnant women, for women during childbirth and for infants, as well as for young children (pp. 28 and 29). In addition to the maternal and child health booklet, which ensured that children were given a number of medical examinations during the first year of life, a school health record card had been introduced in order to provide school physicians with better information about the state of each child's health (p. 31).

44. With a view to preventing, treating and controlling various types of diseases in urban and rural areas, Austria had adopted a variety of measures, in the context of its health policy, based on an assessment of all the factors that could affect the health of the population (pp. 30 and 31).

45. As to comprehensive plans and specific measures to ensure adequate health, he said that institutions managed by governmental authorities and by charitable or other organizations provided, inter alia, home care and household help, in particular for the elderly. Such activities were governed by provincial legislation as well as by the General Social Insurance Act (p. 30). With a view to improving medical coverage, the number of physicians in hospitals had recently been increased through an amendment to the Physicians Act.

46. Mrs. JIMÉNEZ BUTRAGUEÑO (Spain) asked whether young people were eligible for unemployment insurance before their first employment. Referring to the facilities for women who wished to terminate their employment because of marriage or the birth of a child (pp. 9-10), she pointed out that such provisions seemed to be somewhat discriminatory, since the high cost of employing women might make employers prefer to hire men. Accordingly, she asked whether a woman's decision to leave work was entirely voluntary, how long women were required to stay at home after receiving the relevant special payments and whether they could return to work whenever they so desired.

47. Mr. SVERRE (Norway) requested additional information concerning the position and rights of women during marriage and upon its dissolution, particularly with regard to personal and property rights.

48. Mr. ABDUL-AZIZ (Libyan Arab Jamahiriya) said that the thoroughness of the report submitted by Austria reflected the Austrian Government's concern for the implementation of the rights covered by articles 10 to 12 of the Covenant. Although the report referred to the rights of all sectors of society, measures applicable to disabled persons did not seem to be mentioned. While he personally knew that Austria had adopted comprehensive legislation in that connexion, he requested additional information on how the provisions of the Covenant were applied to disabled people in Austria.

49. Mr. KORDS (German Democratic Republic) said that the report submitted by Austria contained a very comprehensive survey of the legal situation and of the measures taken by the Austrian Government to implement the provisions of articles 10 to 12 of the Covenant; his delegation did not wish to raise any additional questions in that connexion.

50. Miss MANGAZA LUANGHY (Zaire), referring to ILO Convention No. 89 concerning Night Work of Women Employed in Industry (p. 5), asked whether those provisions applied only to women employed in an industrial undertaking or whether they applied to women in other sectors as well. She also asked for clarification concerning the words "public or private industrial undertaking".

51. Mr. BORCHARD (Federal Republic of Germany) said the excellent and detailed report submitted by Austria showed that it was not enough to have good legal provisions - for example, provisions to ensure an adequate standard of living - unless they were accompanied by a successful economic policy. Accordingly, Austria's achievements in maintaining full employment, controlling the rate of inflation and keeping up the level of industrial and agricultural production were particularly impressive in the light of the economic strains affecting all countries in the world. However, he felt that additional examples of how Sozialpartnerschaft helped to provide an adequate standard of living would be useful. He also asked whether the provisions of the Food Quotas Act of 1952 (p. 18) had ever been applied and what experience had been gained in that connexion.

52. Mr. SAMSON (International Labour Organisation) drew attention to the indications concerning Austria which were contained on pages 7 and 8 of the report of the ILO Committee of Experts (E/1981/41). He pointed out that, in connexion with maternity protection and the protection of children and young persons, Austria had extensive legislative measures and had ratified a number of relevant ILO Conventions. The Committee of Experts had felt that it would be desirable to have additional information concerning the fixing of special age limits for the admission of young persons to dangerous work and concerning any measures taken to prohibit the employment of young persons in specific types of dangerous or unhealthful work in agriculture and forestry.

53. Mr. ALMOSLECHNER (Austria) assured members of the Working Group that he would convey their comments to his Government and, speaking as a civil servant, would merely try to answer certain questions tentatively.

54. Referring to the question from the representative of Spain concerning unemployment insurance for young people prior to their first job, he noted that Austria was very fortunate in that it did not yet have any major unemployment problem or any difficulty in providing first jobs for young people. He assumed that the insurance coverage provided by schools was extended until young people obtained their first job. As to the question how long women were prohibited from working before and after pregnancy, he explained that, after the 8-week or 12-week post-natal leave, a woman was free either to return to work immediately or to take unpaid leave until her child's first birthday; during that first year the sickness fund paid her a special cash benefit equivalent to her salary.

55. Replying to the question from the representative of Norway concerning the situation of women in marriage, he explained that in 1970 the Austrian Ministry of Justice had undertaken a major reform of the family law in order to bring it into line with contemporary economic and social developments, particularly those concerning the advancement of women and their employment. As a result, women were no longer obliged by law to live with their husbands, husbands could not prevent their wives from working, and both partners had equal responsibility for maintaining the family; marriage was considered to be a genuine partnership. Divorce legislation had also been changed, making it easier to obtain a divorce. New penal legislation had further emancipated women. The previous ban on abortions had been lifted, and they could now be performed during the first trimester of pregnancy, provided that the pregnant woman herself so wished and that the operation was performed by a physician. Accordingly, the trend in Austria was towards an equal status of husbands and wives in marriage.

56. As to the question from the representative of the Libyan Arab Jamahiriya concerning measures for the disabled, he noted that for many years Austria had had legislation under which every enterprise must employ a certain percentage of disabled people. That percentage had been especially high following the Second World War; currently the main problem was that of persons disabled by industrial accidents. However, the measures elaborated in connexion with the International Year of Disabled Persons, whose secretariat was in fact at Vienna, would surely be implemented in Austria.

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57. Replying to the question asked by the representative of Zaire about night work done by women, he explained that the relevant provisions applied to all sectors, without distinction. Moreover, since services ended early in the day in Austria - for example, Vienna restaurants closed at approximately 11 p.m. - the night work done by women was reduced to a minimum. Shifts in industry had also been completely eliminated.

58. Referring to the question asked by the representative of the Federal Republic of Germany concerning Sozialpartnerschaft, he explained that Austria was a country which was governed by a number of institutions in addition to the Government itself. Such institutions included employers' and employees' associations, which had been working together very successfully since the Second World War. Under Sozialpartnerschaft, before any measures were taken by trade unions - for example, in connexion with a strike - the trade union and the employers' association concerned met to discuss ways of finding a solution to the matter at issue. He drew attention to the fact that in Austria time lost due to strikes was measured in seconds per year. Sozialpartnerschaft also monitored prices very closely, particularly those of foods and basic goods, with a view to limiting inflation. Especially important in that respect was the spirit of close co-operation between the representatives of employers and employees, which had been maintained over the years, irrespective of the Government in power or of political parties. In his opinion, that spirit resulted from the experiences shared during the Second World War and from the common effort to enable Austria to recover, to find its own identity and to prove to the world that it was a viable nation.

59. Referring to the Food Quotas Act of 1952, he said that, to his knowledge, that Act had never been applied thus far. However, it provided a detailed plan that could be applied in the case of a major crisis.

60. In conclusion, referring to provisions governing young persons doing dangerous work, he said that although he did not know precisely what legislation would be adopted, he was certain that during the International Year of Disabled Persons that matter would be carefully reviewed.

The meeting rose at 1.20 p.m.